

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017054932701**

TO: Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

RE: Emanuel Omar Avina (“Avina”)  
Former Registered Representative  
CRD No. 5403314

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, I, Emanuel Omar Avina, submit this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

Avina entered the securities industry in 2007, when he became registered with FINRA as a General Securities Representative through Ameriprise Financial Services, Inc. (“Ameriprise” or the “Firm”). Ameriprise terminated Avina’s registration on December 27, 2016 for a failure to meet performance expectations and production goals.

Avina subsequently registered with FINRA as a General Securities Representative, among other registrations, through another FINRA member firm from January 3, 2017 until September 22, 2017, when his registration was terminated after he voluntarily resigned. Beginning in December 2016 and continuing to the present, Avina has also been registered as an investment adviser with the State of California through Avina Financial Group, Inc., an investment advisory firm that he established in December 2016.

Avina is not currently registered or associated with a FINRA member firm, but FINRA retains jurisdiction over him pursuant to Article V, Section 4 of FINRA’s By-Laws.

## **OVERVIEW**

Between January and June 2017 (the “Relevant Period”), while associated with a FINRA member, Avina impersonated six Ameriprise customers during eight telephone calls made to Ameriprise’s customer service center. During the phone calls, Avina acted as the customers for the purposes of liquidating securities, transferring money, obtaining account information, and requesting copies of checks. Avina carried out all of the impersonations in order to facilitate underlying transactions and requests that the customers had authorized and wanted executed. By impersonating six customers, Avina violated FINRA Rule 2010.

## **FACTS AND VIOLATIVE CONDUCT**

FINRA began an investigation into this matter after receiving a Uniform Termination Notice for Securities Industry Registration (“Form U5”) amendment filed by Ameriprise on July 7, 2017. The amended Form U5 reported that Ameriprise had conducted an internal review and determined that, after his termination from Ameriprise, Avina had called the Firm’s service center, identified himself as the Firm’s customers, effectuated transactions for three clients, and requested information for additional clients.

FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” Impersonating customers or former customers is inconsistent with this standard, and constitutes a violation of Rule 2010.

During the Relevant Period, Avina impersonated six Ameriprise customers during eight telephone calls made to Ameriprise’s customer service center. Avina conducted each impersonation in order to carry out transactions and requests that these customers had authorized and wanted executed. Avina conducted some of these impersonations in order to facilitate the customers’ wishes to transfer money out of Ameriprise in order to be managed by Avina’s new investment advisory firm. Although Avina made some of the customers aware of his impersonations, other of the customers were not aware of and did not authorize Avina to impersonate them. Avina impersonated customers in order to (i) request account numbers and deposit information for the customer; (ii) request that copies of deposited checks be sent to the customer; (iii) request paperwork regarding the liquidation of securities held by the customer; (iv) direct the liquidation of securities held in customers’ accounts; or (v) direct the disbursement of proceeds from customers’ accounts by check to the customer’s home address, or by wire transfer to the customer’s bank account.

By virtue of the foregoing, Avina failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

- A suspension from association with any FINRA member in all capacities for 45 calendar days.
- A \$7,500 fine.

The fine shall be due and payable either immediately upon reassociation with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
  - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
  - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  - 4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. The Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I, Emanuel Omar Avina, certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

02/20/2019  
Date (mm/dd/yyyy)

  
Emanuel Omar Avina, Respondent

Reviewed by:

  
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Jeremy L. Bartell  
Counsel for Respondent  
BARTELL LAW PLLC  
700 12<sup>th</sup> Street, NW, Ste. 700  
Washington, DC 20005  
Tel: 202-430-1040

Accepted by FINRA:

2/26/2019  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

  
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Samir Ranade  
Senior Counsel  
FINRA Department of Enforcement  
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